No. 96-1577

In The

Supreme Court of the United States

October Term, 1997

STATE OF ALASKA,

Petitioner,

v.

NATIVE VILLAGE OF VENETIE TRIBAL GOVERNMENT, ET AL.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF ALASKA FEDERATION OF NATIVES, ALASKA INTER-TRIBAL COUNCIL, KETCHIKAN INDIAN CORPORATION AND NATIVE VILLAGE OF NINICHICK, VILLAGE CORPORATIONS OF EMMONAK, INALIK, KOTLIK UPIK, AND NUNAMIUT, ALASKA PENINSULA CORPORATION, BRISTOL BAY HEALTH CORPORATION, ALASKA COMMUNITY ACTION PROGRAM (RURAL CAP), NORTHWEST ARCTIC BOROUGH, AND CITIES OF AKIAK, CHEFORNAK, EEK, GOODNEWS BAY, NEWHALEN, PLATINUM, AND QUINHAGAK AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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Interest of amici[1]

Amicus Alaska Federation of Natives (AFN) is the largest Native organization in Alaska. Its membership includes 178 Native villages, 13 regional corporations, and 12 regional non-profit corporations. In accordance with its charter and by-laws, AFN authorized the filing of this brief on behalf of its membership.

Amicus Alaska Inter-Tribal Council is a statewide tribal advocacy organization with 171 Alaska Native tribes as members.

Amici Ketchikan Indian Corporation, IRA Council, and Ninichick Village, are federally recognized Indian tribes.

Amici Emmonak Corporation, Inalik Native corporation, Kotlik Yupik Corporation, and Nunamiut Corporation are village corporations organized pursuant to the Alaska Native Claims Settlement Act. Amicus Alaska Peninsula Corporation is a consortium of five tribes, which delivers federal Indian services to its members under contract with the United States. Amicus Bristol Bay Area Health Corporation is a consortium of 32 tribes, which delivers health care to its members under contract with the United States.

Amicus Alaska Community Action Program (RurAL CAP) is a statewide non-profit corporation committed to village tribal rights of self-governance.

Amicus Northwest Arctic Borough is a state-chartered municipal government, which contains eleven Native villages. Amici Cities of Akiak, Chefornak, Eek, Goodnews Bay, Newhalen, Platinum, and Quinhagak are state chartered municipal corporations.

Amici and their members share a common interest in preserving the Native communities' ability to effectively govern themselves and their territory.

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[1] Counsel for a party did not author this brief in whole or in part. No person or entity, other than the amici curiae, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

Summary of Argument

In 1971, Congress passed the Alaska Native Claims Settlement Act (ANCSA) to settle long-outstanding and extensive aboriginal land claims of Alaska Natives. The Act settled the Natives' claims by extinguishing aboriginal title and substituting therefore smaller areas for the support of the Natives' way of life and titled to corporations controlled by the Natives. In doing so, the Act provided for the continuation of Indian country in Alaska. Although the present status of each such territory must be determined on a case by case basis, the present circumstances of the Natives villages in general show the present existence of dependent Indian communities in Alaska.

Argument

I. At the time of the enactment of ANCSA, the Native villages of Alaska were Indian country in fact and in law.

Congress deliberated on Alaska land claim issues for more than four years before it enacted the Alaska Native Claims Settlement Act, 43 U.S.C. §1601 et seq., developing a voluminous record on the condition and land claims of Alaska Natives. This record, which obviously informed the final terms of ANCSA, shows the Native villages as Indian country in fact – villages occupied almost exclusively by Natives, governed in the traditional way, and dependent upon the resources of their territory for their existence. This same record demonstrates the villages' aboriginal title to their territories – which title constitutes Indian country as a matter of law.

ANCSA must be placed against this backdrop – the Native villages as Indian country in fact and in law – and construed to preserve that which Congress did not expressly extinguish.

A. At the time of ANCSA, Native villages – the basic units around which Native life, government, and subsistence activities were organized – were the paradigm of Indian country.

The State of Alaska is a large, ecologically diverse place. Its east-west span stretches 2,000 miles and its north-south span 1,100 miles. It totals 375 million acres. Federal Field Committee for Development Planning in Alaska, *Alaska Natives and the Land*, transmitted to Congress on October 1, 1968 at 89.[2] The State ranges in climatic extremes from the moderately mild marine areas in the southeast to the Arctic zone north of the Rocky Mountain System divide. *Id.* at 89. The Natives adapted themselves to live with and off this varied land, which meant great variation among the villages in their subsistence patterns. Nevertheless, the villages of 1968 had important traits in common.

The villages were isolated, almost exclusively Native, and contained the overwhelming majority of Alaska's Natives. Of the approximately 53,000 Natives in the state in 1968, two-thirds lived in Native villages.[3] Most such villages

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[2] Early in its deliberations on the subject, Congress realized the complexity of Alaska Natives' aboriginal title claims. Consequently, Congress commissioned the Federal Field Committee for Development Planning in Alaska to report to it on the Alaskan Native land claims. One volume of this report, titled *Alaska Natives and the Land*, is a detailed and thorough study of the Alaska villages and the villages' close connection to their land immediately preceding the enactment of ANCSA. *See* S. Rep. No. 92-405, 92d Cong., 1st Sess. at 73-74 (1971), describing the report as having, "provided to a very large extent both the background information necessary to an understanding of the land claims issue and a suggested framework of alternative methods by which the complex legal, social and economic problems presented could be resolved." The following overview of the villages is drawn largely from this report to Congress. A copy of *Alaska Natives and the Land* is lodged with this brief for the Court's convenience.

[3] In fact, up until World War II, Natives remained the majority population in the entire State of Alaska. When non-Natives moved into the

were small, with an average population of 155, an overwhelming majority of whom were typically Native. None was an urban place. *Id.* at 5-6. Less than a dozen villages were on the state's limited road network, with access to the others limited to air only or, seasonally, by boat or snowmobile. *Id.* at 42. None of the villages had electricity and only 23 had telephone service, precluding communication with the villages except by letter or radio.[4] *Id.* at 45.

"Characteristic of village Alaska is the widespread use of aboriginal languages, and, except for conversation with government people or other whites, avoidance of English." *Id.* at 45. Aboriginal governments also prevailed in Alaska's villages. Of the 178 villages surveyed in 1968, 84 had a traditional form of government only, with leaders selected through customary means or open election. Another 14 villages had no formal government structure, but managed their affairs and territory through village councils of some form. The remaining 80 villages were organized formally under either the Indian Reorganization Act (IRA)[5] or state law.

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state, they generally settled in the southern and coastal regions, far away from most Native villages. As a result, even when the Native population became the minority of the state overall, the villages remained overwhelmingly Native. *Alaska Natives and the Land* at 435.

[4] Most villages had radio transmitters and receivers, but these were owned by schools. Education and supporting facilities were the highest fiscal expenditures by the United States on behalf of Alaska Natives in fiscal year 1968. That year, the Bureau of Indian Affairs expended about $20 million for operation of its schools, teachers' quarters, new construction, and maintenance of existing facilities. The second largest federal expenditure in 1968 was $16.5 million by the Division of Indian Health for Alaska Native health care. Together, these two agencies expended approximately $43 million in 1968 for services to Alaska Natives. *Alaska Natives and the Land* at 31.

[5] Act of June 18, 1934, 48 Stat. 984, codified at 461 et seq. Not all provisions of the 1934 act applied to Alaska. In 1936, Congress extended the remaining provisions of the act to Alaska Natives; this act also authorized the Secretary of the Interior to designate Indian reservations in

Oftentimes, a village was organized in more than one form or under more than one law. Of the 59 surveyed villages that were chartered under the IRA in 1968, 22 were also incorporated as first, second, or fourth class cities under state law, making them eligible for state revenue sharing funds. Another 19 villages were incorporated under state law only. *Alaska Natives and the Land* at 47.

The village governments applied both customary and state law, being literally the only governments exercising any authority over the vast areas claimed by aboriginal title.[6] Alaska law provided for the formation of area government known as boroughs. In 1968, nine boroughs had been organized which served the non-Native population centers of the state; only 13 villages were located within these boroughs. All other villages were located in the "unorganized borough" for which the state legislature could sit as a borough assembly. The Alaska Legislature never acted as an assembly for the unorganized borough, leaving the villages as the only functioning governments on the ground. *Id.* at 48.

The final, and for present purposes, most important trait common to the Native villages was their dependence upon their territory. "Residing in this land of contrast are native peoples with varied ethnic origins and cultural traits. Throughout history and still today they share one great thing in common – their dependence upon the land and its waters for their very existence." *Id.* at 91.

The Natives' subsistence activities varied from region to region in Alaska, with the villages within each region relying

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Alaska upon vote of the adult Natives living within the proposed reservation. *See* Act of May 1, 1936, 49 Stat. 1250, codified at 473a; *see generally Alaska Natives and the Land* at 436-437.

[6] In 1958, Congress extended territorial law (and upon statehood, state law) to Indian country in Alaska. Act of August 8, 1958, 72 Stat. 545. It is not surprising, then, that the villages would apply state as well as tribal law. *See In re McCord,* 151 F.Supp. 132 (D. Alaska 1957), holding that Indian country existed in Alaska where there was a functioning tribal government.

on the same biotic or marine resources and exhibiting similar subsistence patterns as a result. *See id.* at 141-142, comparing seasonal, migratory subsistence patterns with more permanent villages engaged in marine subsistence activities. Whatever their subsistence pattern, the villages were as fully aware of their boundaries "as if fences had been erected." *Id.* at 145. The extent of boundaries depended upon the relationship between acreage required for subsistence maintenance and the carrying capacity requirements for different species of wildlife, resulting in the reliance of any given village upon literally thousands of square miles to support life. *Id.* at 160-162.

The details of all regions' subsistence activities in 1968 were reported to Congress. In most regions, these activities differed little from those conducted historically. "[T]he means have changed – natives now use rifles and outboard motors – but the end is the same, i.e., food is secured for survival from one of the harshest environments in the world." *Id.* at 176. Congress was also provided a complete list of historic and contemporary Native villages and descriptions of the territories subject to the villages' subsistence activities, effectively documenting the Native's aboriginal title claims. *Id.* at 85-285; *see also Tee-Hit-Ton v. U.S.*, 348 U.S. 272 (1959), regarding Indian title in Alaska.

In the last decades before ANCSA, villages sought protection for their aboriginal territory through the creation of reserves for their benefit. In the 1940's, six reservations were created under the IRA, *supra*. By 1968, more than one hundred additional petitions for IRA reserves had been filed by villages. Because of non-Native opposition to reservations, these petitions languished for years at the Department of the Interior with no action taken on them before the passage of ANCSA. *Alaska Natives and the Land* at 443; *see also* D. Case, *Alaska Natives and American Law* (1984), ch. 3., on Alaska reservation policy and history.

B. The pre-ANCSA aboriginal territories of the Native villages plainly constituted Indian country as a matter of law.

Aboriginal title, also known as original Indian title, is the purest form of Indian property rights. It stems from the Natives' own long-standing connection to and dominion over a known territory. Unlike other Indian property rights, it does not depend for its existence upon a grant or confirmation of rights from the United States. Recognized by European powers upon their arrival on the continent as well as by the United States, it assured the continued existence of Native peoples in their aboriginal state, until and unless the dominant government provided otherwise. *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543, 573-574 (1823); *see generally* Cohen, *Original Indian Title*, 32 Minn. L. Rev. 28 (1947). Under current federal law, it is a federally protected property right that cannot be disturbed by third parties. *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 667 (1974); *United States ex rel. Hualpai Indians v. Santa Fe Pacific Railroad*, 314 U.S. 339 (1941).

In *Bates v. Clark*, 95 U.S. 204 (1877), this Court, faced with the task of defining Indian country without guidance from Congress, held that Indian country was determined by reference to aboriginal title.[7] In this Court's words, "The simple criterion is that . . . it was Indian country whenever the Indian title had not been extinguished, and it continued to be Indian country so long as the Indians had title to it, and no

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[7] The term "Indian country" was used in the 1790, 1793, 1796, and 1799 temporary versions of the Indian Trade and Intercourse Act, but was undefined. Congress first defined the term in the 1834 permanent version of the act, Act of June 30, 1834, 4 Stat. 729, to mean land "to which the Indian title has not been extinguished . . . " *Id.*, §§1, 29. The definition of Indian country was deleted in the 1874 revised statutes, but the substantive provisions of the act which employed the term were carried forward, leaving the task of defining the term to the court. *See Handbook of Federal Indian Law* (1982 ed.) at 30-32.

longer." *Id.* at 208; *see also U.S. v. Chavez*, 290 U.S. 357, 364 (1933); *Clairmont v. U.S.*, 225 U.S. 551, 557 (1912).

When Congress codified the more expansive definition of Indian country in 1948,[8] it uncoupled reservation status from Indian ownership. *Solem v. Bartlett*, 465 U.S. 463, 468 (1984). As a result, Indian title is no longer necessary to constitute Indian country under 18 U.S.C. §1151(a), but Indian title remains sufficient to constitute Indian country under 18 U.S.C. §1151(b). The purpose of the 1948 statute was to expand, not restrict, the scope of Indian country. *Donnelly, supra*; *State v. Dana*, 404 A.2d 551, 555 (Me. 1979). Further, the Indian title/Indian country rule of *Bates v. Clark* has not been overruled. The rule has been criticized as too restrictive, but the rule still obtains *as to land held in Indian title*. "With reference to the country that was formerly subject to the Indian occupancy, the cases cited [*Clairmont, supra*, and others] furnish a criterion for determining what is Indian country." *State v. Dana, supra*; *see also Donnelly, supra* at 269.

In current parlance, the *Bates v. Clark* line of cases demonstrates that territory held under Indian title must be considered as "set aside" for those Indians as a matter of law: it is dedicated to the federal purpose of providing for the support of Natives in their aboriginal custom, pending any

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[8] In the decades following *Bates v. Clark*, the Court tailored the definition of Indian country to varied Indian land tenures and increasingly complex Federal Indian policy. *See Donnelly v. U.S.*, 228 U.S. 243 (1913) [holding territory set aside as a reservation Indian country]; *United States v. Sandoval*, 231 U.S. 28 (1913) [holding that fee title held by pueblos under Spanish land grants constituted Indian country]; *United States v. Pelican*, 232 U.S. 442 (1914) [holding that a single trust allotment is Indian country]; and *United States v. McGowan*, 302 U.S. 535 (1938) [holding that trust land acquired by United States for Indians after statehood is Indian country.] Congress codified this more expansive definition of Indian country in 1948. *See* 18 U.S.C.A. §1151, Historical and Revision Notes (West 1963), referring to the *McGowan* and *Sandoval* decisions.

change in such by the United States.[9] *See Oneida Indian Nation v. County of Oneida, supra.* Under this rule, the territory occupied by Alaska's Native villages constituted Indian country before the passage of ANCSA.

II. ANCSA provided for the continued existence of Indian country in Alaska as to lands surrounding and set aside for the benefit of designated Native villages.

Where a federal relationship exists with an Indian tribe, Congress must explicitly state its intention to terminate that relationship. *Menominee Tribe v. United States*, 391 U.S. 404, 412 (1968). Where a territory has been set aside for the occupancy of a tribe within the meaning of the Indian country statute, Congress must explicitly state its intention to terminate that status. *Solem v. Bartlett, supra.* In all such instances, the congressional act must be construed as understood by the Indians.[10] Construed by reference to these rules, it is plain that Congress did not intend in ANCSA and the Natives did not understand that ANCSA terminated Indian country in Alaska.

While ANCSA expressly extinguished aboriginal title in Alaska [43 U.S.C. §1603] and revoked reservations previously created in Alaska under authority of Executive Order,

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[9] As demonstrated by Respondent, 18 U.S.C. §1151(b) has been generally construed in recent case law to require federal superintendence over the Indians in question and a federal set aside of the territory in question to establish a dependent Indian community. *See* Respondent's Br. II,C. The preceding section demonstrates that Alaska's Native villages were clearly subject to federal superintendence before the passage of ANCSA. The *Bates v. Clark* line of cases addresses the set aside criterion.

[10] *See Choctaw Nation v. United States*, 397 U.S. 620 (1970); *Jones v. Meehan*, 174 U.S. 1 (1899). While applied by the Court there to Indian treaties, this and other canons of construction apply to Indian statutes as well. "The essential policy for the development of the canons in treaty cases was not based on the form of the transaction, a treaty, but rather was rooted in the special trust relationship between the United States and Indian tribes." *Handbook of Federal Indian Law* at 223-224.

the IRA, or special legislation [*Id.*, §1618], ANCSA did not expressly extinguish any other form of Indian country in Alaska.[11]

To the contrary, Congress simply provided for a substitute land tenure for Native villages – in the place of expansive aboriginal title, Congress provided for the conveyance of more limited land bases to village corporations in fee title dedicated to the villages' benefit in general and the support of traditional way of life in particular. This substitute territory was "set aside" under federal law for the benefit of Natives, thereby confirming such territory as dependent Indian communities as of the date of ANCSA.[12]

The continuing Native character of each territory and its present status as Indian country must be determined on a case

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[11] For example, Congress had provided in 1906 for the issuance of allotments to Alaskan Natives in the amount of 160 acres of nonmineral lands. Act of May 17, 1906, 34 Stat. 197, as amended by Act of August 2, 1956, 70 Stat. 954. By 1968, 15,216 acres had been granted to 175 Native allottees under these acts. *Alaska Natives and the Land* at 451. The allotments are Indian country under 18 U.S.C. §1151(c). *U.S. v. Pelican*, *supra*. In addition, Natives were permitted to select lots from the public domain under the Native Townsite Act, Act of May 25, 1926, 44 Stat. 629, *repealed* by the Federal Land Policy Management Act, 43 U.S.C. §1701 et seq. ANCSA repealed the Secretary's authority to issue further allotments, but did not terminate allotments previously granted under either the 1906 or 1926 acts.

[12] The earliest cases construing the dependent Indian community subsection of 1151 looked to "the nature of the area in question, the relationship of the inhabitants of the area to Indian tribes and to the federal government, and the established practice of government agencies toward the area." *United States v. Martine*, 442 F.2d 1022, 1023 (10th Cir. 1971). By the 1980's, the test became more formally stated as requiring federal superintendence over the tribe and a federal set aside of the territory in question. *State of Alaska v. Venetie*, 101 F.3d 1286, 1293, *cert. granted* 117 S.Ct. 2478. Not surprisingly, then, Congress did not use the current parlance on dependent Indian community when enacting ANCSA in 1971, but as demonstrated here the Act's provisions had the same affect.

by case basis, but ANCSA plainly established a framework for the continuation of Indian country in Alaska.

A. Congress' deliberations leading up to the passage of ANCSA show a consistent intention to substitute one Native land tenure for another, for the dual purposes of providing for the villages' continued way of life and creating opportunities for economic development.

As part of its detailed factual report to Congress, the Field Committee encouraged Congress to take into account three considerations in any Alaska Native land claim settlement: first, the villages must be the focus of a settlement, since the villages laid claim to Alaska through their use and occupancy of the land; second, the surface rights should be severed from the subsurface rights, since the former supported subsistence activities and the latter were important as an economic development tool; and third, the identifiable villages must have the right to select surface rights to land. *Alaska Natives and the Land* at 3, ["in proposed settlements affecting land, it is they who are the principal focus: the Natives of village Alaska"], 287, and 441 [quoting from President Johnson's March 6, 1968, Message to Congress, "Give the native people of Alaska title to the lands they occupy and need to sustain their villages."] These themes appeared in all the bills considered by Congress.

From 1968 forward, Congress focused on the villages and their need for land to support their way of life as a fundamental component of any proposed settlement.[13] Through various means, the early bills clearly identified the access of villages to traditional subsistence areas as a primary goal in the award

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[13] *See Alaska Native Land Claims*, Hearings before the Committee on Interior and Insular Affairs, U.S. Senate, 90th Cong., 2d Sess., on S. 2906, S. 1964, S. 2690, and S. 2020 (1968) [hereinafter the Senate hearings (1968)].

of land. *Id.*[14] These bills also reflected an early consensus that accommodation of subsistence and economic development needs could be made by setting aside surface rights for subsistence and dedicating income from subsurface rights for economic development.[15]

These early bills differed in one important respect of particular concern to the Natives. The Administration proposed mandatory trust status for land conveyed to Native villages in both its early bills. *See* S. 1964, §3(e), [Senate

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[14] S. 2906, drafted by a task force including representatives of the Natives, the State, and the Department of the Interior, provided for the conveyance of 40 million acres to the villages and further authorized Native use of federal lands to "continue to use or occupy, for hunting, fishing, and trapping purposes, and for any other aboriginal land use . . ." Senate Hearings (1968) at 13. S. 1964, a bill proposed by the Administration in 1967, authorized the Secretary of the Interior to take into trust lands needed by villages "for livelihood of the community, taking into account such factors as population, economic resources of the group, traditional way of life and the nature and value of the land . . ." *Id.* at 16. S. 2690, introduced at the behest of certain Native groups, simply provided that land proved to be held under Indian title, and not claimed by a third party, would be confirmed to the villages. *Id.* at 22.

[15] *See* S. 2906, §301; Senate Hearings (1968) at 325, Statement of Alaska Attorney General Boyko, on dedication of a percentage of royalties from Outer Continental Shelf development to settlement; *Alaska Native Land Claims*, Hearing on H.R. 11213, HR. 15049, and H.R. 17129, 90th Cong., 2d Sess., (1968) [hereinafter House Hearing (1968)] at 120, on a percentage of the State's mineral royalties dedicated to settlement; *see also* S. 3586, §5(a), authorizing the conveyance of up to 50,000 acres to each village, including "(1) title to the village site or sites now occupied by such group, and (2) title to such additional lands in the vicinity of such site or sites which, in [the Secretary's] judgment, would contribute significantly to the reasonable community expansion to fulfill future economic and social requirements, taking into account such factors as population, economic resources of said group, traditional way of life of said group, and the nature and value of the land proposed to be granted," and §9, proposing to sever the subsurface rights from those lands conveyed to the villages and grant such rights to a statewide corporation with oversight for economic development of villages, Senate Hearings (1968) at 518, 520.

Hearings (1968) at 17]; S. 3586, §8, [Senate Hearings (1968) at 519]. By contrast, the Native-supported bills proposed that land be titled to the Natives directly, or to corporations chartered under the IRA or state law. *See* S. 2906, §211, [Senate Hearings at 9]. Throughout the two hearings over four days held on these bills, the Native witnesses unanimously and vigorously opposed placing their lands in mandatory trust and under control of the Bureau of Indian Affairs.[16]

The State of Alaska relies upon excerpts from these statements by Native leadership and their attorney on the early bills as support for its construction of ANCSA as terminating Indian country in Alaska. Petitioner's Br. at 29, 35. By these statements, the Native leadership bluntly indicated their desire to be free of the Bureau of Indian Affairs, but at no point did the Native leadership indicate a desire that the Natives' recognized ability to govern their own affairs – the sine qua non of the federal/tribal relationship – be terminated.[17]

To the contrary, the Native leadership argued forcefully for greater self-determination, not less in the form of limited or complete termination. *See, e.g.*, Senate Hearings (1968) at 78 (Statement of George Ondola, Chairman of the Village Council of Eklutna.) In 1968, the Alaska Natives were in the forefront of Federal Indian policy in their insistence upon self-determination. It has since become axiomatic that Indian self-determination comports with a continued United States' trust relationship with Indians. Indeed, the federal Indian

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[16] *See* Senate Hearings (1968) at 88-90 (Statement of Barry Jackson); Senate Hearings (1968) at 207, 208 (Statement of Elva Naanes, Secretary, Alaska Federation of Natives); Senate Hearings (1968) at 213, 232 (Statement of Donald Wright, President of Cook Inlet Native Association.)

[17] *See* Notice, 58 Fed. Reg. 54364, October 21, 1993, indicating that, as federally recognized Indian tribes, Alaska villages exercise the same powers of self-governance held by other recognized Indian tribes.

policy of tribal self-determination is now viewed as the highest expression of the Federal trust relationship. *See* Respondent's Br., III.

Other differences existed between the Natives and the Department of the Interior on proposed land claim settlement terms, principally on the amount of land and money to be conveyed to the Natives. *See* House Hearing (1968), H.R. 17129 (introduced at the request of the Administration) at 72; (Statement of Emil Notti, President, Alaska Federation of Natives) at 109. On one point, though, an early consensus was reached and maintained that the villages required a land base to support the traditional way of life and to provide for future economic development. Throughout its deliberations on the subject, Congress heeded President Johnson's call for a settlement that provided Alaska Natives with title to the land needed to sustain their villages.[18]

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[18] *See* Committee Report on H.R. 10367, which after compromise with the Senate became the final version of the Act: "[T]he Committee took into consideration the land needed for ordinary villages sites and village expansion, the land needed for a subsistence hunting and fishing economy by many of the Natives, and the land needed by the Natives as a form of capital for economic development;" View of the Department of the Interior on H.R.10367: "[The bill] will, on the one hand provide land that is necessary for the living and subsistence needs of those natives who continue to rely upon the land for their living, while at the same time provide an economic settlement both in terms of cash contributions and patents to land and mineral rights which we consider to be generous and equitable which will be used by the natives for promoting their economic development to the fullest extent possible." *Providing for Settlement of Land Claims of Alaska Natives*, H. Rep. No. 523, 92d Cong., 1st Sess. at 5, 23 (1971).

B. In ANCSA, Congress authorized the designation of villages of Native character and the selection of land for the benefit of those villages to be held by village corporations, effectively setting aside those lands for Alaska's Native villages.

In its overall structure and main features, the final terms of ANCSA reflected the position of the Natives. It authorized the conveyance of 44 million acres to Native corporations: up to 22 million acres in surface rights to village corporations and the remaining acres in both surface and subsurface rights for regional corporations and other special needs.[19] It provided for Native control of their resources and future through the use of village and regional corporations. It also acknowledged the Natives' desire for income from subsurface rights to support economic development of Native Alaska.[20]

In particular, Congress expressly adopted the Natives' desire for self-determination. "In sections 7 and 8 of the conference report authorizing the creation of Regional and Village Corporations, the conference committee has adopted a policy of self-determination on the part of the Alaska Native people." Conference Report at 37. In addition, Congress made plain its intent that land surrounding the villages be conveyed

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[19] The State suggests that the Ninth Circuit's judgment may result in Indian country status for the entire 44 million acres conveyed to Native corporations under the Act, which are "dispersed in a buckshot fashion throughout the State." Petitioner's Br. at 45. This is simply not the case. The Ninth Circuit focused its analysis on lands conveyed to village corporations (up to 22 million acres). This brief focuses on the same lands and, as indicated below, those lands are not spread "buckshot" throughout the state but are compact around the villages themselves. *See* Anchorage Daily News, *Indian Country: Two Destinies, One Land*, Special News Section, June 29-July 5, 1997, at 20-21, which shows the location and compact boundaries of village corporation lands. A reprint of this special news series has been lodged with this brief.

[20] *See Alaska Native Claims Settlement Act*, Conference Rep. No. 581, 92d Cong., 1st Sess., (1971), to accompany H.R.10367, [hereinafter Conference Report (1971)] at 35.

to village corporations for the support of the villages' way of life. *Id.*

The statutory and regulatory scheme set out in ANCSA was well tailored to accomplish these general purposes. Native villages, defined in the Act as "any tribe, band, clan, group, village, community, or association," had to meet two requirements to be eligible for benefits under the Act: first, the village had to have at least twenty-five residents; second, the village could not be "of a modern and urban character" with the majority of its residents non-Native. 43 U.S.C. §§1602(c), 1610(2). The lands to be withdrawn for the benefit of eligible villages were those surrounding and adjacent to the village, or other public lands "of a character similar to those on which the village is located and in order of their proximity to the center of the Native village." 43 U.S.C. §§1610(a)(3), 1613.[21]

Eligible Native villages were entitled to "receive lands and benefits under this Act," but were required to first incorporate under state law. *Id.*, §1607(a). The village corporations were the business arms of the villages, with only the Native residents of the villages entitled to incorporate and such corporations, by definition, formed to hold and manage lands and funds under the Act "on behalf of a Native village . . . " *Id.*, §§1607(a), 1602(j). The subsurface rights to these lands were transferred to the regional corporations, with the village corporations authorized to consent to the exploration or development of minerals "from the subsurface estate in the lands within the boundaries of any Native village . . . " *Id.*, §1613(f).

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[21] The total acreage to be withdrawn for the benefit of an eligible village depended upon the 1970 population of the village: 69,120 acres for villages with 25 to 99 residents; 92,160 acres for villages with 100 to 199 residents; 115,200 acres for villages with 200 to 399 residents; 138,240 acres for villages with 40 to 599 residents; and 161,280 acres for villages with 600 or more residents. 43 U.S.C. §1613(a). The patents issued to the village corporations were for surface rights, while the subsurface rights to those lands were patented to the regional corporations. *Id.*, §1613(f).

Clearly the linchpin for the land selections by village corporations and the receipt of other benefits under the Act was the determination of villages' eligibility to incorporate. The Act made an initial determination of village eligibility by setting out a list of two hundred and five (205) Native villages that were subject to the Act. *Id.*, §1610(b). The Act further authorized the Secretary of the Interior to review the list to confirm the eligibility of the listed villages, delete ineligible villages, and add unlisted but eligible villages. *Id.*

On May 30, 1973, the Secretary adopted regulations to implement ANCSA that set out a regulatory process for Alaska Native land selections. *See* 38 Fed. Reg. 14218 (1973), codified at 43 C.F.R. §2651 (1996). These regulations established procedures for determining the eligibility of villages to incorporate as well as the lands selected by incorporated villages. Substantively, these administrative processes are virtually identical to the inquiry undertaken by courts to determine the existence of Indian country under 18 U.S.C. §1151(b).

The regulations established an informal adjudicatory process to determine village eligibility. The Juneau Area Office of the Bureau of Indian Affairs was directed to investigate and examine records and evidence "bearing on the character of the village and its eligibility . . . " 43 C.F.R. §2651.2(a)(1) (1996). Findings of fact and a proposed determination on each village were to be published locally and in the Federal Register. In the case of a protest (against either a proposed determination of eligibility or ineligibility), the matter would be referred to an ad hoc board appointed by the Secretary and composed of members "familiar with Native village life." *Id.*, §2651(a)(5). Either the board (in the event of an appeal) or the Bureau of Indian Affairs issued a "certificate of eligibility" to those villages that demonstrated the required criteria. *Id.*

The criteria for village eligibility varied somewhat, depending upon whether the village was listed in §§1610 and

1615 of the Act.[22] The regulations presumed that the 205 listed villages in §1610 were majority Native. These villages were required to demonstrate the minimum number of residents, "an identifiable physical location evidenced by occupancy consistent with the Natives' own cultural patterns and life style," and that they were not modern and urban in character. 43 C.F.R. §2651.2(10)(b)(3) (1996). In addition to these criteria, unlisted villages were also required to demonstrate that a majority of residents were Native. *Id.*, §2651.2(b)(4).

Once determined to be eligible, a village was required to incorporate. The corporation then selected its maximum surface acreage entitlement under the Act. *Id.*, §2651.4(b). The regulations required that the village corporation select first, the township(s) encompassing the village, and second, additional acreage as necessary. The selections were required to be contiguous where possible and reasonably compact. Further, the regulations provided that land selections would not be considered reasonably compact if the selection excluded lands available for selection outside the exterior boundaries of those selected, or if lands "similar in character to the village site or lands ordinarily used by the village inhabitants are disregarded in the selection process . . . " *Id.* §2651.4(b)(2).

This process resulted in a list of villages, certified as Native in character by the Department of the Interior, and eligible thereby to incorporate and select public lands for their benefit largely out of their former aboriginal territory. *See* Final Eligibility of Native Villages, 38 Fed. Reg. 26217,

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[22] Section 1615 listed the Tlingit-Haida villages separately. Special provisions were made for these villages, inasmuch as Congress had authorized and the Indians had successfully prosecuted a case against the United States for a partial taking of their aboriginal lands. *See Tlingit & Haida v. U.S.*, 389 F.2d 778 (Ct.Cl. 1968). The other villages were not the subject of any litigation regarding their aboriginal rights.

September 19, 1973.[23] Under every permutation of the governing standard, this process effectively determined that the eligible villages and the territory transferred for their benefit to village corporations constituted dependent Indian communities, at least as of that date.[24] *See Narragansett Indian Tribe of Rhode Island v. Narragansett Elec. Co.*, 89 F.3d 908 (1st Cir. 1996); *Pittsburg & Midway Coal Co. v. Watchman*, 52 F.3d 1531 (10th Cir. 1995); *United States v. South Dakota*, 665 F.2d 837 (8th Cir.), *cert. denied*, 459 U.S. 823 (1982), all enumerating factors relevant in determining the existence of a dependent Indian community.[25]

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[23] This list certified 170 villages out of the 205 listed in §1610 of the Act. Other villages were added in the following months, after the Department investigated applications from villages that were not listed in the Act.

[24] The entire 22 million acres transferred to village corporations for the benefit of villages may or may not constitute Indian country. Those parcels that encompassed or were adjacent to the villages were plainly set aside for the support of the village and, as such, constituted Indian country under §1151(b). However, in some cases, non-contiguous parcels were conveyed to village corporations to meet the village's acreage entitlement under the Act. Whether these non-contiguous parcels also constituted Indian country would depend upon the circumstances in each case.

[25] These decisions list in toto the following factors as relevant: whether the U.S. retains title to or has otherwise permitted the Indians to occupy the land; the nature of the area in question; the relationship of the inhabitants to the U.S.; whether the inhabitants exhibit cohesiveness in economic and other pursuits; the established practice of the federal government toward the area; the extent to which the area was set aside for the use, occupancy and protection of dependent Indian peoples. These factors have been distilled into two basic inquiries: whether the Indians in question are subject to federal superintendence; and whether the area in question was set aside under federal law for the use, occupancy, and protection of those Indians. *State of Alaska v. Venetie*, 101 F.3d at 1291-1292.

C. None of the Act's provisions, either singly or cumulatively, had the effect argued by the State of Alaska of extinguishing all forms of Indian country in Alaska.

The State of Alaska argues against Amici's construction of the Act by citing the land tenure established for the selected lands, the rejection of reservation status for those lands, the required transfer of certain lands and facilities to municipal corporations, and the underlying suggestion that at some point in the future the Natives would be completely absorbed into non-Native society. Petitioner's Br. at 34-39. None of these provisions or assumptions, however, is inconsistent with the construction proposed here.

This Court has time and again rejected the proposition that a general belief that a statutory regime would result in the abolition of Indian country is sufficient evidence of Congress' intent to terminate Indian country. In construing the General Allotment Act (or Dawes Act) and surplus lands acts,[26] this Court has refused to extrapolate a specific congressional intent to abolish a reservation from a general expectation regarding the eventual demise of the reservation. *Solem v. Bartlett*, 465 U.S. at 468, and cases cited therein. Congress' general expectation that the Native villages may fall by the wayside as a consequence of ANCSA (even assuming Congress expected such), then, will not alone support a terminationist construction of the Act.

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[26] These acts, unlike ANCSA, were explicitly terminationist in their goals and specific provisions. *See* Act of February 8, 1887, 24 Stat. 388, codified at 25 U.S.C. §334. The original Dawes Act provided for the breaking up of reservations into individual Indian allotments and provided for a twenty-five year trust period for allotments, during which time the allotments would be inalienable. *Id.*, §§1, 5. If these provisions of the explicitly terminationist General Allotment Act did not extinguish Indian country, a land claim settlement intended to foster greater self-determination should not be so construed.

Neither do the specific provisions of ANCSA cited by the State demonstrate a plain congressional intent to extinguish Indian country. Certainly the substitution of fee patented land for aboriginal title cannot support a termination of Indian country. This is simply a change in land tenure and does not signify a lesser dedication of the land so held to the support of dependent Indians. *See United States v. Sandoval, supra.*[27] Neither should the conveyance of the withdrawn lands to village corporations, rather than the villages themselves, dictate a contrary result. These corporations were the villages incorporated, maximizing development possibilities for the land through the corporate structure "for and on behalf of a Native village". 43 U.S.C. §1602(j). Certainly, a mechanism chosen by the villages in the name of self-determination should not be construed as a back-handed extinguishment of governing authority previously enjoyed by the villages over their territory.[28]

Finally, the requirement that certain lands within the villages be conveyed to municipal corporations [43 U.S.C. §1613(c)(3)] does not reflect an intent to extinguish all forms

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[27] Petitioner argues that a dependent Indian community, with its land held by fee patent, is the jurisdictional equivalent of an Indian reservation. Petitioner's Br. at 30-31. The jurisdictional consequences under §1151 may be the same, but the extent of regulatory powers held by the Bureau of Indian Affairs for the two are not the same. The Alaska Native leadership objected to Bureau control over their land, not the jurisdictional consequences of Indian country. *See* discussion *supra*.

[28] As noted above, the village corporations when incorporated were the same as the villages themselves. It is theoretically possible that as time passes and due to certain circumstances, the tie between the village and the village corporation may become attenuated. In that event, that village's connection to the lands selected for its benefit by the village corporation would be loosened and, hence, that village's present claim for dependent Indian community status weakened. As a general proposition, though, this has not occurred in village Alaska. Most villages remain closely connected to the lands withdrawn for their benefit under the Act. *See* discussion *infra*.

of Indian country. As noted above, state municipal corporations have been present in many of the Native villages for decades. In ANCSA, Congress provided for the separation of municipal functions from tribal functions, but the separate existence of local, municipal governments does not vitiate the continued functioning of tribal governments in the same boundaries. *See*, *Seymour v. Superintendent*, 368 U.S. 351, 358 (1962), where the Court held that an analogous town site provision in a surplus lands act did not reflect an intent to diminish Indian country.

The only real question raised by the State's arguments regarding the provisions of ANCSA is whether, as a result of the combined effect of these provisions, the villages have lost their Native character and their connection to the lands withdrawn for their benefit. Whether such has occurred at any given village is a matter to be determined by a trial court when, and if, the question is appropriately presented. As a general proposition, though, Alaska's villages have maintained their Native character and their close connection to the lands set aside by Congress for their benefit.

III. Today, the Native villages of Alaska remain Indian country in fact.

Most of the Alaska villages or tribes currently recognized by the United States were certified as eligible to incorporate and select lands under ANCSA.[29] And the overwhelming

[29] The United States currently recognizes 226 Alaska Native villages or tribes as self-governing entities. Notice, 61 Fed. Reg. 58211, November 13, 1996. According to research of the Alaska State Legislature, Congress expended approximately $496.5 million between the Bureau of Indian Affairs and the Indian Health Service in the provision of federal Indian services to Alaska's federally recognized tribes in fiscal year 1997. *See* Memorandum, dated May 29, 1997, addressed to Senator Al Adams, from Division of Legal & Research Services, Legislative Affairs Agency, Alaska State Legislature. Interestingly, while federal expenditures for Natives have remained stable, the number of Bureau of Indian Affairs personnel has

majority of those villages or tribes that received "set aside" lands under the Act remain today Native in character and, for all practical purposes, the only functioning governments in their territories.

According to the 1990 decennial census, roughly one half of Alaska's Native villages are 90% Native and over two-thirds are 75% Native. 1990 Census Report at 22-24. Except for those Natives born after ANCSA, the village residents are generally the same people who are shareholders of the village corporations. This is as a result of the original twenty year restriction in the Act against alienation of shares and the 1988 amendment to the Act which extends indefinitely that restriction against alienation, subject to corporation shareholders' decision to lift such. *See* Act of February 3, 1988, 101 Stat. 1788, codified at 43 U.S.C. §§1606(h), 1629b, and 1629d.[30] Obviously, these same villagers also control any municipal government located in their territory.

Because the same Native village residents generally control the village or tribe and the village corporation, there is in most regions a high level of cooperation between the two. In a few cases, the village corporations have actually transferred the land held by them for the village to the village or tribe itself. *See Indian Country* at 9 (June 30, 1997), describing the transfer of land from the Kipnuk Village Corporation to the traditional Yu'pik government for the Kipnuk Village. Whether the "set aside" lands are held by the village corporation or the village, the Natives continue their traditional subsistence activities on the set aside lands. *See Indian Country* at 3 (June 29, 1997), regarding subsistence activities at

declined from over 1,000 two decades ago to fewer than 100 today, as a result of the villages' assumption of Bureau administrative functions. *Indian Country* at 10 (June 30, 1997).

[30] The 1988 amendments also authorized ANCSA corporations to issue shares to children born after 1971. 43 U.S.C. §1606(h). Several regional corporations, including Nana Regional Corporation, a member of Amicus AFN, have done so.

Venetie; *id.* at 6 (June 29, 1997), regarding Quinhagak; *id.* at 10 (June 30, 1997), regarding Akiachak; and *id.* at 17 (July 2, 1997), regarding Kipnuk.[31]

Similarly, the Native villages generally have a cooperative relationship with local municipalities, where municipalities exist. Only 34 new municipalities have been incorporated since ANCSA and less than half of the villages have completed the conveyances to municipalities required by §1613(c)(3) of the Act. Indeed, seven municipal corporations have been dissolved since ANCSA. *See* Report of Department of Community and Regional Affairs on ANCSA 14(c)(3) Progress, State of Alaska, dated September 9, 1997. Clearly, ANCSA has not fostered a rush toward the substitution of municipal governments for tribal governments. To the contrary, tribal and municipal governments work together, with the tribes assuming more and more local government responsibilities over the last twenty years, from law enforcement to water and sewer. *Indian Country* at 10 (June 30, 1997). In one case, for example, the municipality simply contracts with the tribe for the delivery of all services. *Id.* at 9 (June 30, 1997),

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[31] In some cases, the administrative and financial burden of the village corporations has proven to be too much for the villages to bear. Within Nana Regional Corporation, a member of Amicus AFN, for example, ten of the eleven village corporations in the region have merged with the regional corporation, citing the need to conserve administrative resources. In the merger, the regional corporation acquired the surface rights to land held by the village corporations for the benefit of the villages. However, tribal IRA councils must consent to the exploration or development of subsurface rights to land adjacent to the villages, a right previously held by the village corporations. As a result, the tribes in the Nana Regional Corporation have maintained the same connection to the land adjacent to their villages as those villages with active village corporations.

discussing arrangement between Village of Quinhagak and Amicus City of Quinhagak.[32]

As the most active local governments, tribes engage in a range of activities in their territories. Such activities include Indian child custody proceedings, village environmental protection initiatives, land use regulation and natural resource protection, construction and improvement of local roads, construction of public works and a whole range of mundane matters appropriate to local government. *See, e.g., Indian Country* at 5-8 (June 29, 1997), on Village of Quinhagak's resource management and regulation of fishing in Kanektok River with State cooperation; *id.* at 24-25 (July 4, 1997), on Kwethluk's caribou management program undertaken in cooperation with State and Federal officials; *id.* at 22 (July 3, 1997), on tribal regulation of alcohol in Indian country.[33]

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[32] *See also*, Ordinance 89-13, of Amicus Northwest Arctic Borough, which expressly recognizes the governmental status of the eleven villages located within its borders and directs borough cooperation with such villages in the exercise of the boroughs' powers or performance of its duties as a state chartered local government.

[33] As this Court has noted, tribal sovereignty includes a territorial component. *See White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 151 (1980); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 335 n.18 ("Our cases have recognized that tribal sovereignty contains a 'significant geographical component' "). The Secretary of the Interior and Secretary of the Treasury have implicitly acknowledged that the inherent governmental authority of at least one Native village, the Village of Barrow (a member of Amicus AFN), has a significant territorial component. Under the Indian Tribal Governmental Tax Status Act, 26 U.S.C. §§7701(a)(40), 7871, Departments of the Interior and Treasury were authorized to determine which tribal governments exercised governmental functions which, according to Treasury's regulations under the act, included clearly territorial based powers such as the power to tax, the power of eminent domain, and police power. IRS Cumulative Bulletin 1984-1, pg. 513. In consultation with Interior, Treasury certified the Village of Barrow as exercising such inherent power. IRS Cumulative Bulletin 1983-2 at 606, 611.

Most importantly and notwithstanding the State's protestations to the contrary, the villages continue to perform most law enforcement functions in village Alaska. "Most law enforcement officials agree that the long arm of the [state] law doesn't reach very effectively into the bush." *Indian Country* at 18 (July 3, 1997). Except for the most serious felonies, the State's law enforcement role in Native villages is very limited. There are simply no State police officers, no prosecutors and no State courts in the Native villages, except for a few regional centers like Nome, Bethel, and Barrow.[34]

The State is perfectly aware of this reality on the ground. Countless State officials, including judges, magistrates, troopers, prosecutors, correction officers, assistant attorneys general, youth counselors and welfare case workers, have entered into agreements with, transferred cases to, encouraged and supported the governance and peace keeping efforts of Native tribes. The State's cooperation in aiding Native governance is not just common knowledge; it has been documented

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[34] John E. Angell, *Public Safety and the Justice System in Alaska Native Villages*, January 1981, "Slightly over half of the rural villages in Alaska have a part-time person who is considered the police department. There are no other representatives of the "justice" system in most communities except during an emergency or the existence of a special problem. A few have a makeshift cell that can be used for the temporary detention of dangerous, disorderly, suicidal or drunk prisoners. Otherwise such people are handcuffed or taped to secure objects such as beds or posts until they calm down or assistance – usually from a State Trooper living in a faraway community – is obtained" at 3; "In most villages when a life-threatening emergency occurs, it is not uncommon to spend hours, and on occasion days, attempting to get a request for assistance to a law enforcement official outside the community" at 28; "[T]he justice system in the rural Native communities of the State is understaffed, inadequately funded and nearly invisible" at 63. For the Court's convenience, a copy of the Angell article has been lodged by Amici with this brief.

since territorial days in books, articles, law reviews, news stories, and the State's own official reports.[35]

Similarly, the State's failure to provide law enforcement or keep the peace in rural Alaska is equally well documented. *See* n.34, *supra*. In short, contrary to the State's contention, the decision below does not reverse but affirms the basic jurisdictional premise upon which both the State and tribes have operated since statehood.

IV. For Alaska and its non-Native residents, the consequences of Indian country in Alaska are neither dramatic nor disruptive.

The demographic facts of life in Alaska restrict the impact of the Ninth Circuit's decision largely to the Natives themselves. Just as the Native villages are overwhelmingly Native, the overwhelming majority of non-Natives live well outside Indian country. More than ninety (90) percent of the Alaska's non-Native population lives within the urban areas of Anchorage, Fairbanks, Juneau, Ketchikan, Kenai, Mat-Su and Sitka Boroughs or the predominantly non-Native villages and regional centers, none of which would constitute Indian country under the Ninth Circuit's judgment. *See* 1990 Census of Population and Housing, U.S. Dep't of Commerce, 1990 at 20-26. Those few non-Natives who do reside in the Native villages are there by choice, not as a result of federal policy encouraging non-Native settlement there; these non-Natives have generally entered into consensual relations with the

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[35] Arthur Hippler and Stephen Conn, *The Village Council and its Offspring: A Reform for Bush Justice*, 5 UCLA-Alaska L. R. (1975) at 39 ("United States Commissioners, territorial and State judges and prosecutors, and State and Federal Alaska Native Service personnel provided support and implicit or even explicit endorsement of Council justice") at 40, 41, 42, 43; Angell, *supra* at 18, 95-111; *Indian Country* at 18 (July 3, 1997). For the Court's convenience, Amici have lodged a copy of the Hippler and Conn article with this brief.

Natives and have consented thereby to tribal jurisdiction. *See Montana v. United States*, 450 U.S. 544 (1981).

Neither does the Ninth Circuit's judgment undermine significant State interests in Indian country as argued by the State. The Ninth Circuit's judgment confirms tribal authority over Venetie; it does not address the extent of State authority over Venetie. Congress has already granted the State civil and criminal jurisdiction over Indian country in Alaska, giving the State concurrent authority in that regard with the tribes. *See* 72 Stat. 545, Act of August 8, 1958; *see generally, Handbook of Federal Indian Law* at 344-346. And the extent of the State's regulatory authority will depend, as its does throughout Indian country, upon a particularized inquiry into the State's interests: an analysis that plainly takes into account significant state interests. *See Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989). Finally, the State's concerns regarding fish and game management and tax revenues from Venetie have already been addressed by this Court and Congress.[36]

The State's concerns regarding Indian country in Alaska are flights of fancy that bear little relation to reality in Alaska. If anything, the administration of Indian country in Alaska is simpler than elsewhere, given the absence of checkerboarding in the compact village territories. *See Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463 (1976).

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[36] Regarding fish and game management, no treaty rights to fish and hunt exist in Alaska (which rights were the subject of the *New Mexico v. Mescalero Apache Tribe, supra*, decision cited by the State) and aboriginal hunting and fishing rights were extinguished by Congress in ANCSA. 43 U.S.C. §1603. *See* Petitioner's Br., n.34. In addition, the Court had made clear that Indian fishing and hunting rights may be regulated by the State if reasonable and necessary for conservation purposes. *Department of Game v. Puyallup Tribe*, 414 U.S. 44 (1973). Finally, Congress has already expressly exempted undeveloped land held by village and regional corporations from state taxation. 43 U.S.C. §1620(d).

Conclusion

With Indian country status, the Natives are able to govern largely their own people and their own territory. Without Indian country status, the Natives will be left largely with no local government at all. Most Native villages today remain outside an organized borough and more than one hundred Native villages have no municipal corporation at all. Under these circumstances, Indian country status is not only appropriate, it is necessary for the administration of any justice in Native Alaska.

Respectfully submitted,

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